IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

W.P.(C).No.32454 of 2006(L)

PETITIONER:-

A.THAHA KOYA, S/O. ALIKUNJU,
AGED 62 YEARS, NAZ MANZIL, SOUHRITHA NAGAR,
KAVANADU P.O., KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR
SRI.K.P.SUJESHKUMAR

RESPONDENTS:-

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1. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, KOLLAM.

3. THE TAHSILDAR, REVENUE RECOVERY, KOLLAM.

4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,
   KOLLAM.

5. WEST QUILON MATCH INDUSTRIAL CO-OPERATIVE SOCIETY,
   KAVANADU, KOLLAM,
   * REPRESENTED BY ITS SECRETARY.

*ADDRESS OF THE 5TH RESPONDENT IS CORRECTED AS
PER ORDER ON I.A.NO.17193 OF 2006 DATED 15.12.2006.

R1 to R4 BY SENIOR GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE THIRD RESPONDENT TO THE FIFTH RESPONDENT DATED 9.5.2006.

EXT.P2 - TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 30.11.2006.

- TRUE COPY -

K.Padmanabhan Nair,J.

W.P.(C).No.32454 of 2006-L

Dated, this the 19th day of February, 2007

JUDGMENT

The petitioner challenges Exhibit P1 demand notice by which the Government had initiated revenue recovery proceedings against the petitioner for recovery of the amount due from the 5th respondent-Society to the State.

2. The petitioner was the President of the 5th respondent Society. The accounts of the Society were being audited by the Government from time to time. The Society have to deposit the audit fee. The Society did not deposit the audit fee. So an amount of Rs.1,02,018/- is due to the Government by way of audit fee. It is for recovery of that amount, Exhibit P1 demand notice was issued. According to the petitioner, he has no personal liability to pay the amount and this has to be recovered from the asset of the Society, if any. A perusal of Exhibit P1 notice shows that in fact it was addressed to the Society and not to the petitioner. The apprehension of the petitioner is that after issuing such a demand notice, the authorised officer is trying to recover

the same from the person of the petitioner as well as his properties. In O.P.No.23467 of 2002, this Court has taken a view that for the amounts due from the Society, a member of the Society cannot be made personally liable. In fact, the respondents have no case that there is any provision in the Kerala Co-operative Societies Act which makes the members of the Director Board personally responsible for the audit fee due from the Society. It goes without saying that State cannot initiate any steps to recover the amount from the person or property of the petitioner.

In the result, the writ petition is disposed of in the following manner: It is declared that the petitioner is not personally liable for the amount claimed in Exhibit P1 notice as the same was audit fee due from the Society. His properties are also not liable to be attached and sold for the audit fee. I make it clear that this order will not be a bar for the Government to recover the amount from the asset of the Society, if any.

K.Padmanabhan Nair
Judge

vku/-